

AMENDED IN ASSEMBLY MAY 13, 2013

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 140

Introduced by Assembly Member Dickinson
(Coauthor: Assembly Member Gatto)

January 17, 2013

An act to add Section 86 to the Probate Code, and to amend Section 15610.30 of, and to add Section 15610.70 to, the Welfare and Institutions Code, relating to undue influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, as amended, Dickinson. Undue influence.

Existing law provides that financial abuse of an elder or dependent adult occurs when, among other instances, a person or entity takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined.

Existing law makes failing to report, or impeding or inhibiting a report of, among other things, financial abuse of an elder or dependent adult, in violation of certain reporting requirements a misdemeanor. Existing law also makes it a misdemeanor for any caretaker of an elder or dependent adult to violate any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult.

This bill would change the definition of undue influence to mean excessive persuasion that causes another person to act or refrain from

acting and results in inequity. The bill would require, in determining whether the result was produced by undue influence, the vulnerability of the victim, the influencer's apparent authority and whether the influencer knew or should have known of the victim's vulnerability, the actions or tactics used by the influencer, and the equity of the result to be considered. The bill would specify that nothing in these provisions be construed to imply that an inequitable result, without more, will constitute undue influence or excessive persuasion.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits the use of undue influence and establishes protections for individuals unable to resist undue influence in various areas of the law, including wills, trusts, and conservatorships.

This bill would define undue influence for those purposes without superseding or interfering with the common law of undue influence.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 86 is added to the Probate Code, to read:
- 2 86. "Undue influence" has the same meaning as defined in
- 3 Section 15610.70 of the Welfare and Institutions Code. It is the
- 4 intent of the Legislature that this section supplement the common
- 5 law meaning of undue influence without superseding or interfering
- 6 with the operation of that law.
- 7 SEC. 2. Section 15610.30 of the Welfare and Institutions Code
- 8 is amended to read:
- 9 15610.30. (a) "Financial abuse" of an elder or dependent adult
- 10 occurs when a person or entity does any of the following:
- 11 (1) Takes, secretes, appropriates, obtains, or retains real or
- 12 personal property of an elder or dependent adult for a wrongful
- 13 use or with intent to defraud, or both.

1 (2) Assists in taking, secreting, appropriating, obtaining, or
2 retaining real or personal property of an elder or dependent adult
3 for a wrongful use or with intent to defraud, or both.

4 (3) Takes, secretes, appropriates, obtains, or retains, or assists
5 in taking, secreting, appropriating, obtaining, or retaining, real or
6 personal property of an elder or dependent adult by undue
7 influence, as defined in Section 15610.70.

8 (b) A person or entity shall be deemed to have taken, secreted,
9 appropriated, obtained, or retained property for a wrongful use if,
10 among other things, the person or entity takes, secretes,
11 appropriates, obtains, or retains the property and the person or
12 entity knew or should have known that this conduct is likely to be
13 harmful to the elder or dependent adult.

14 (c) For purposes of this section, a person or entity takes, secretes,
15 appropriates, obtains, or retains real or personal property when an
16 elder or dependent adult is deprived of any property right, including
17 by means of an agreement, donative transfer, or testamentary
18 bequest, regardless of whether the property is held directly or by
19 a representative of an elder or dependent adult.

20 (d) For purposes of this section, “representative” means a person
21 or entity that is either of the following:

22 (1) A conservator, trustee, or other representative of the estate
23 of an elder or dependent adult.

24 (2) An attorney-in-fact of an elder or dependent adult who acts
25 within the authority of the power of attorney.

26 SEC. 3. Section 15610.70 is added to the Welfare and
27 Institutions Code, to read:

28 15610.70. (a) “Undue influence” means excessive persuasion
29 that causes another person to act or refrain from acting and results
30 in inequity. In determining whether a result was produced by undue
31 influence, all of the following shall be considered:

32 (1) The vulnerability of the victim, including, but not limited
33 to, incapacity, illness, disability, injury, age, education, impaired
34 cognitive function, emotional distress, isolation, or dependency.

35 (2) The influencer’s apparent authority, including, but not
36 limited to, status as a fiduciary, family member, care provider,
37 health care professional, legal professional, spiritual adviser, expert,
38 or other qualification, and whether the influencer knew or should
39 have known of the victim’s vulnerability.

1 (3) The actions or tactics used by the influencer, including, but
2 not limited to, controlling necessities, medication, the victim's
3 interactions with others, or access to information, sleep deprivation,
4 use of affection, intimidation, or coercion, initiation of changes in
5 personal or property rights, use of haste or secrecy in effecting
6 those changes, effecting changes at inappropriate times and places,
7 or claims of expertise in effecting changes.

8 (4) The equity of the result, including, but not limited to, the
9 economic consequences to the victim, any divergence from the
10 victim's prior intent or course of conduct or dealing, the
11 relationship of the value conveyed to the value of any services or
12 consideration received, or the appropriateness of the change in
13 light of the length and nature of the relationship.

14 (b) ~~Nothing in this~~ This section shall *not* be construed to imply
15 that an inequitable result, without more, establishes the element
16 of undue influence or excessive persuasion.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.